

Alan A. Rudnick
Assistant General Solicitor

No. 0-197A010
Date JUL 15 1980
Fee \$ 50.00
ICC Washington, D. C.



July 14, 1980

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2471

Ms. Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

11999
RECORDATION NO. Filed 1425

JUL 15 1980 10:15 AM

Attention: Mrs. M. R. Lee, Room 2303
Recordation Unit

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Enclosed are executed counterparts Nos. 4, 5, and 6 (of 6) of an Agreement dated as of July 1, 1980, between The Chessie Corporation, P. O. Box 6419, Cleveland, Ohio 44101 (as Bailor) and The Baltimore and Ohio Railroad Company, 100 North Charles Street, Baltimore, Maryland 21202 (as Bailee).

The equipment covered by the above documents consists of:

266 100-ton open top hopper cars, with AAR Mechanical Designation HT, to bear Bailee's road numbers 189912 - 190177, inclusive.

The above equipment will be lettered "Chessie System", "B&O", or in some other appropriate manner, and will also be marked:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION".

Also enclosed is a remittance in the amount of \$50 representing the required recording fee.

Pursuant to the Commission's rules and regulations for the recordation of certain documents under 49 USC Sec. 11303 (formerly Sec. 20c of the Interstate Commerce Act), as currently administered, you are hereby requested to file one of the enclosed counterparts for record in your office and to return the remaining copies to me at my above address.

Thank you in advance for your cooperation.

Sincerely,

AAR:aj
Enclosures

JUL 15 1980 11:00 AM
RECEIVED
FEE OPERATION BR.
I.C.C.



The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

Interstate Commerce Commission
Washington, D.C. 20423

7/15/80

OFFICE OF THE SECRETARY

Alan A. Rudnick
Assist Gen. Solicitor
Chessie System
Terminal Tower
P.O.Box 6419
Cleveland, Ohio 44101

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **7/15/80** at **10:15am** and assigned recordation number(s). **11999**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

EXECUTED IN 6 COUNTERPARTS
OF WHICH THIS IS NO. 4

AGREEMENT

Dated as of July 1, 1980

11999
RECORDATION NO. Filed 1425
JUL 15 1980 - 10 15 AM
INTERSTATE COMMERCE COMMISSION

between

THE CHESSIE CORPORATION

and

THE BALTIMORE AND OHIO RAILROAD COMPANY

Covering

266 100-Ton Open Top Hopper Cars

THIS AGREEMENT, dated as of July 1, 1980, by and between THE CHESSIE CORPORATION, a Delaware corporation ("Manufacturer"), and THE BALTIMORE AND OHIO RAILROAD COMPANY, a Maryland corporation ("B&O"):

W I T N E S S E T H:

The Manufacturer and B&O heretofore entered into an Agreement, dated as of July 1, 1980, ("Manufacturing Agreement"), a copy of which Agreement is made a part hereof by reference, whereunder the Manufacturer agreed to construct and deliver to B&O, and B&O agreed to accept and pay for, the following railroad equipment ("Cars"):

266 100-ton Open Top Hopper Cars, to bear B&O's road numbers 189912 to 190177, inclusive.

Delivery of the Cars by the Manufacturer to B&O is scheduled to begin in July, 1980. However, inasmuch as B&O has not as yet consummated financing arrangements (pursuant to an Equipment Trust Agreement, or otherwise), it is not in position to accept delivery of and pay for the Cars under the terms of Manufacturing Agreement at this time. B&O represents that such financing arrangements will be consummated, however, on or before November 1, 1980. B&O (in order that it may use the Cars pending completion of the above financing arrangements) has arranged with the Manufacturer to give it temporary custody and possession of the Cars on their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to B&O, and B&O hereby accepts from the Manufacturer, the Cars as of the date each of them is delivered to B&O at Russell, Kentucky, or such other place as may be specified by B&O, for the period ending on the earlier of November 1, 1980, or the date of consummation of the above financing arrangements. At such time this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Title to the Cars shall remain in the Manufacturer and B&O's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. B&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation pursuant to 49 USC Sec. 11303. In addition, B&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

B&O agrees that it will permit no liens of any kind to attach to the Cars, and that it will:

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind, and
- (b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, operation, management, or handling of the Cars by B&O during the term of this Agreement.

C&O's obligations contained in this paragraph shall survive the termination by mutual agreement or otherwise of this Agreement.

B&O will, at its own expense, keep and maintain the Cars in good order and running condition and will, at its option, repair or replace or promptly pay to the Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to B&O under this Agreement, it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently, and conspicuously marked upon each side of each Car, in contemplation of the financings heretofore referred to, the following legends in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

B&O hereby agrees to indemnify the Manufacturer against any liability, loss, or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced, or destroyed on any Car, B&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits, or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the Manufacturing Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities, or any other obligations contained in this Agreement or in the Manufacturing Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and B&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by B&O under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to B&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Manufacturing Agreement, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Cars, not subject to any defense, set-off, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&O by the Manufacturer. Any and all such

obligations, howsoever arising, shall be and remain enforceable by B&O, its successors and assigns, only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

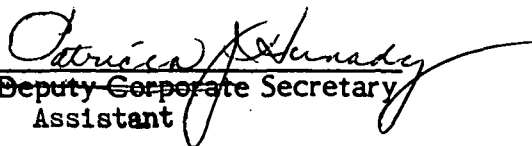
B&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to B&O of the Cars, as contemplated by this Agreement, shall not relieve B&O of its obligations to accept, take, and pay for the Cars in accordance with the terms of the Manufacturing Agreement, or impair any of the Manufacturer's rights under the Manufacturing Agreement.

THE CHESSIE CORPORATION

By 
Assistant Vice President
and Treasurer

(Corporate Seal)

Attest:


Deputy Corporate Secretary
Assistant

THE BALTIMORE AND OHIO RAILROAD
COMPANY

By 
Assistant Vice-President
and Treasurer

(Corporate Seal)


Attest:


Deputy Corporate Secretary

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 4TH day of July, 1980, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is a Assistant Vice-President and Treasurer of THE CHESSIE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)




Notary Public
CLARA MASUGA, Notary Public
State of Ohio - Cuyahoga County
My Commission Expires April 21, 1984

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 4TH day of July, 1980, before me personally appeared L. C. Roig, Jr., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE BALTIMORE AND OHIO RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)



Notary Public
CLARA MASUGA, Notary Public
State of Ohio - Cuyahoga County
My Commission Expires April 21, 1984